

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

SHANE MORRISS,

No. CV 06-2471 VRW/NJV

Plaintiff,

**REPORT AND RECOMMENDATION RE
PLAINTIFF'S REQUEST FOR TRIAL
FOR BREACH OF CONTRACT AND
REQUEST FOR JUDGMENT ON
BREACH OF CONTRACT**

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, et
al.,

(Docs. 70, 71.)

Defendants.

This is a civil rights action which was settled through a settlement conference held on April 8, 2008. (Docket No. 22.) Since that time, a controversy has arisen regarding Defendants' compliance with the settlement agreement. Pending before the undersigned for Report and Recommendation are Plaintiff's Request for Trial for Breach of Contract of Settlement Agreement and Request for Judgment on Breach of Contract. (Docket Nos. 70, 71.) As set forth below, the undersigned recommends that the Court DENY Plaintiff's motions.

DISCUSSION

The settlement agreement between the parties to this action provides in part as follows:

10. The California Substance Abuse and Treatment Facility Chief Medical Officer will review Plaintiff's medical records as soon as possible and recommend a course of action for Plaintiff's back pain. Magistrate Judge Vadas will retain jurisdiction for six months, or longer if Plaintiff moves for continued jurisdiction. This continued jurisdiction by Judge Vadas is only in connection with the Chief Medical Officer's

1 review of Plaintiff's medical records and recommended course of action for Plaintiff's
2 back pain, and not for any other reason.

3 Settlement Agreement, 4-5. The Court entered a Stipulation and Order of Dismissal in this case on
4 June 16, 2008. (Docket No. 24.) That Stipulation and Order of Dismissal incorporated the above
5 language.

6 On April 29, 2009, Plaintiff filed a motion to compel compliance with the settlement
7 agreement. (Docket No. 25.) On November 8, 2010, Plaintiff filed another such motion. (Docket
8 No. 40.) In response to those motions, the undersigned has repeatedly held status conferences with
9 the parties regarding Defendants' compliance with the settlement agreement. (Docket Nos. 30, 58,
10 60, 67.) In his pending motions, Plaintiff now contends that Defendants have breached the
11 settlement agreement by failing to provide the medical treatments recommended as the "course of
12 action" by the physicians who examined him.

13 This action was closed on June 16, 2008, and the Court has retained jurisdiction to the
14 limited extent set forth in the Stipulation and Order of Dismissal, i.e., "only in connection with the
15 Chief Medical Officer's review of Plaintiff's medical records and recommended course of action for
16 Plaintiff's back pain, and not for any other reason." Plaintiff now asserts a claim for breach of
17 contract and seeks a trial regarding this claim. (Docket No. 70.) Further, he also seeks judgment on
18 that claim pursuant to Rule 50(a), Federal Rules of Civil Procedure, which provides for judgment as
19 a matter of law in a jury trial. (Docket No. 71.) District Judge Edward M. Chen referred these
20 motions to the undersigned on February 10, 2012, for a Report and Recommendation to the Duty
21 Judge. (Docket No. 72.)

22 Because the settlement agreement was made part of the Order of Dismissal, a breach of the
23 settlement agreement would constitute a violation of the Order of Dismissal. Thus, this Court has
24 ancillary jurisdiction to enforce the settlement agreement. *Kokkonen v. Guardian Life Insurance*
25 *Company of America*, 511 U.S. 373, 380-81 (1994); *see also Holst v. Ridge*, 78 Fed.Appx. 580 (9th
26 Cir. 2003) (where Court had not retained jurisdiction over the settlement agreement after dismissing
27 the action in its entirety, plaintiff's only remedy was to bring a breach of contract action).
28 Accordingly, the undersigned will recommend that the Court construe Plaintiff's pending motions as
a motion to enforce the settlement agreement.

1 As set forth above, the settlement entered into by the parties to this action provides that,
2 "[t]he California Substance Abuse and Treatment Facility Chief Medical Officer will review
3 Plaintiff's medical records as soon as possible and recommend a course of action for Plaintiff's back
4 pain." Plaintiff concedes that this was accomplished, stating explicitly that a course of action was
5 specifically defined by Anthony Enermoh, M.D., Chief Medical Officer of the California Substance
6 Abuse Treatment Facility. Plaintiff's Request for Trial for Breach of Contract of Settlement
7 Agreement, 1: 25-26. Since this occurred, the Court has repeatedly attempted to reconcile the
8 differing views of the parties as to how Dr. Enermoh's recommended course of action regarding
9 Plaintiff's medical treatment was to be implemented. Plaintiff has thus received not only received all
10 the benefits he is entitled to under the settlement agreement, but also has received much more in the
11 way of efforts by the Court and opposing Counsel to work out a treatment plan acceptable to
12 Plaintiff.

13 Such a treatment plan was agreed to by Plaintiff in the status conference of October 11, 2011.
14 (Docket No. 67.) In that status conference, Plaintiff agreed to an examination by a physician
15 through the Receiver's Telemedicine Physical Medicine and Rehabilitation Clinic. However,
16 Plaintiff effectively prevented the examination from occurring by delivering a speech to the
17 physician and then stating to him, "before you can be my doctor, you have to convince me that you
18 are doing a good job." (Docket No. 69.) The physician informed Plaintiff that he did not have a
19 duty to perform such a task, and would not do so. (*Id.*) The physician agreed to Plaintiff's request to
20 end the doctor patient relationship. *Id.* Plaintiff thus thwarted the implementation of the treatment
21 plan he had agreed to.

22 In conclusion, the undersigned finds that Plaintiff has received much more than he was
23 entitled to under the settlement agreement, and any responsibility for the treatment program not
24 proceeding as agreed by the parties rests with Plaintiff.

25 Accordingly, IT IS HEREBY RECOMMENDED as follows:

- 26 1) that the Court construe Plaintiff's pending motions as a motion to enforce the settlement
27 agreement; and
28 2) that the Court DENY Plaintiff's motion to enforce the settlement agreement as meritless.

1 In accordance with District Judge Chen's order, this Report and Recommendation is
2 submitted to Senior District Judge Charles R. Breyer, General Duty Judge for March 2012.

3 Any party may file objections to this Report and Recommendations with Senior District
4 Judge Breyer within fourteen (14) days after being served with a copy. *See* 28 U.S.C. §
5 636(b)(1)(B) & (C); Fed.R.Civ.Proc. 72(b); Civil L.R. 72-3. Failure to file objections within the
6 specified time may waive the right to appeal from the District Court's order.

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9
10 Dated: March 1, 2012



NANDOR J. VADAS
United States Magistrate Judge

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SHANE MORRISS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
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et al.,

Defendants.

No. CV 06-2471 VRW/NJV

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of the U.S. District Court for the Northern District of California, and that on March 1, 2012, I SERVED a true and correct copy of the attached by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

Shane Morriss
J-53134
California State Prison-LAC
FCB5-149
P.O. Box 4610
Lancaster, CA 93539

/s/ Linn Van Meter

Dated: March 1, 2012

Linn Van Meter
Administrative Law Clerk to Magistrate
Judge Nandor J. Vadas